

(c) reasons for the decision; and

—

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.”

15. From perusal of 107 C.P.C. as well as judgment of Hon’ble Apex Court in **B. V. Nagesh(Supra)**, it is apparent that appellate Court has ample power to take additional evidence or to require such evidence to be taken, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction. Therefore, there is no illegality in the impugned order dated 17.05.2024.

16. Therefore, in light of facts of the case, provisions of CPC and law laid down by the Hon’ble Apex Court in **B. V.**

Nagesh(Supra), I found no infirmity in the impugned order dated 17.05.2024. Petition lacks merits and is accordingly, **dismissed**.

17. No order as to costs.

(2025) 3 ILRA 89
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.03.2025

BEFORE

THE HON’BLE PIYUSH AGRAWAL, J.

Matters Under Article 227 No. 8387 of 2024

M/s LR Print Solutions ...Petitioner
Versus
M/s Exflo Sanitation Pvt. Ltd. & Ors.
...Respondents

Counsel for the Petitioner:

Mr. Abhishek Kumar, Mr. Ishwar Kumar Upadhyay

Counsel for the Respondents:

Mr. Ishir Sripat

Civil Law-The Constitution of India, 1950-Article 227 - The Arbitration & Conciliation Act, 1996-Sections 34 & 37- Payment of mesne profit for not complying the award in its letter and spirit- Petitioner has not vacated the premises in question within 30 days from the date of passing the award and further the petitioner has not brought any material on record to show that the award was stayed by any of the competent Court--- The arbitral award was not stayed or any material was brought on record otherwise and ultimately the award has been affirmed by the Apex Court and no proceedings are pending thereafter---the contesting respondent no. 1 is entitled for mesne profits as the award was not complied with in its letter and spirit. **(Para 22 & 25)**

Petition lacks merit, dismissed. (E-15)

List of Cases cited:

1. M/s Shree Vishnu Constructions. Vs The Engineer in Chief Military Engineering Services & ors., 2023 8 SCC 329

2. U.O.I.& ors. Vs M/s Banwari Lal and sons (P) Ltd. AIR 2004 Supreme Court 1983

3. Small Scale Industrial Manufactures Association (Reg.) Vs U.O.I.& ors., (2021) 8 SCC 511.

4. Board of Control for Cricket in India Vs Kochi Cricket Pvt. Ltd. & ors. (2018) 6 SCC 287;

5. Hindustan Construction Co. Ltd.& ors. Vs U.O.I.& ors., AIR 2020 SC 122;

6. St. of Rajasthan & ors. Vs J.K. Synthetics Ltd. & ors., (2011) 2 SCC 518

(Delivered by Hon'ble Piyush Agrawal, J.)

1. Heard Mr. Abhishek Kumar along with Mr. Ishwar Kumar Upadhyay, learned counsel for the petitioner; Mr. Rahul Sripat, learned Senior Advocate assisted by Mr. Ishir Sripat, learned counsel for the respondents.

2. The petition u/a 227 has been filed for quashing the order dated 24.6.2024 passed by the Executing Court / Commercial Court No. 2, District Gautam Buddh Nagar in Execution Case No. 108 of 2021.

3. Brief facts as stated in the writ petition are that the petitioner is tenant of the industrial plot no. C – 156, Sector 10, NOIDA (area 114 Sq. Meter) (ground floor of the building), since the date of execution of tenancy agreement dated 1.7.2008 at the rate of Rs. 8000/- per month. The agreement was unregistered for a period of 11 months for manufacturing purpose which continued even after expiry of the period. There was a dispute between the plaintiff -petitioner and defendant

respondent no. 1 with regard to the payment of rent, therefore, respondent no. 1 has filed a S.C.C. Case no. 19 of 2011 for ejection of the petitioner. In the said suit, the petitioner has filed an application for rejection of plaint under Order 7 Rule 11 CPC on the ground that since there is an arbitration clause in the rent agreement between the parties, as such, the dispute is required to be decided by the Arbitrator alone and the Court has no jurisdiction in the matter. The said application has been objected by respondent no. 1, however, the Additional Sessions Judge vide order dated 19.9.2015 has rejected the plaint of the respondent. Thereafter, respondent no. 1 has filed Arbitration petition before the sole Arbitrator for the same relief in which the petitioner has filed written statement. Thereafter, the Arbitrator has allowed the claim of the respondent no. 1 vide award dated 19.7.2017, against which the petitioner has filed an objection under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court, Gautam Buddha Nagar. The said objection under Section 34 was rejected vide order dated 30.6.2022. Being aggrieved to the said order, the petitioner has filed Arbitration Appeal Defective no. 46 of 2022, under Section 37 of the Act before this Court, which was rejected vide order dated 6.12.2022. Thereafter the petitioner has approached the Apex Court in Special Leave Petition, which was also dismissed. During pendency of the objection filed by petitioner under Section 34 of the Act, respondent no. 1 has sold the property in question to respondent no. 2 vide registered sale deed dated 5.3.2021 against which Suit No. 342 of 2021 was filed by the petitioner before the Civil Judge (Sr. Division), Gautam Buddha Nagar for cancellation of sale deed dated 5.3.2021, which was rejected vide order

dated 29.5.2023. The said order has been challenged by the petitioner before this Court in First Appeal No. 1000 of 2023, which was admitted on 10.4.2024. In the Execution Case No. 108 of 2021, the decree holder moved an application on 3.4.2024, which was objected by the petitioner but the court below has allowed the application bearing paper no. 89 Ga filed by the contesting respondent by the impugned order dated 24.6.2024 and judgement debtor/ petitioner was directed to make payment of Rs. 8,58,795/-. Hence the present petition.

4. Learned counsel for the petitioner submits that the award dated 19.7.2017 contemplate that if the same was not complied within 30 days then the petitioner would be liable to pay Rs. 15 thousand as mesne profits to the claimant/respondent no. 1 with compound interest @ 10 % from 20.8.2017 till handing over of the possession. He further submits that the application under Section 34 of the Arbitration Act is filed within time , the award would be deemed to be stayed and the petitioner was not obliged to comply with the direction of the award. He further submits that once the award is not operative, there is no question of mesne profits to be paid by the petitioner to respondent no. 1. He further submits that once by operation of law, the award was stayed merely on filing of the application under Section 34 of the Arbitration Act, there is no liability upon the petitioner for making payment of the amount of mesne profits. He further submits that by the impugned order, the Court has not considered the matter in a proper prospective, therefore, it is liable to be set aside. He further submits that the court below has wrongly calculated the amount for payment for the period of December

2020 to March 2021 as the payment of said period is already made by the petitioner. He prays for allowing the present petition.

5. In support of his argument, learned counsel for the petitioner has relied upon the following judgements:-

(i) **M/s Shree Vishnu Constructions. Vs. The Engineer in Chief Military Engineering Services and others**, 2023 8 SCC 329;

(ii) **Union of India and others Vs. M/s Banwari Lal and sons (P) Ltd.** AIR 2004 Supreme Court 1983;

(iii) **Small Scale Industrial Manufactures Association (Reg.) Vs. Union of India and others**, (2021) 8 SCC 511.

6. *Per contra*, Mr. Rahul Sripat, learned Senior Counsel submits that the impugned order has been passed in accordance with law, therefore, no interference is warranted. He further submits that award dated 19.7.2017 clearly provides for payment of mesne profits and penal interest in case of non compliance. It is admitted fact that petitioner did not vacate the premises till April 2024, therefore, as per the award, the petitioner was duty bound to make payment of mesne profits along with interest. He further submits that the award dated 19.7.2017 has attained finality and at no stage, the said award was stayed by any of the competent Court and further no proceeding against the same is pending in any of the court of law.

7. He further submits that the petitioner has instituted the application under Section 34 of the Act in the year 2017 but has not brought any material on record to show that the interim order was granted in its favour, therefore, it is

incorrect to say on the part of the petitioner that merely filing of the application under Section 34 of the Act, automatic stay was deemed in favour of the petitioner.

8. In order to buttress his submission, learned Senior Counsel further submits that in the year 2015, the Arbitration Act has been amended and admittedly, the present proceedings under Section 34 was initiated by the petitioner in the year 2017, therefore, merely filing of the application under Section 34 of the Arbitration Act, no automatic stay can be deemed in favour of the petitioner.

9. In support of his submission, learned Senior Counsel for the respondent has relied upon the following judgement:-

(i) **Board of Control for Cricket in India Vs. Kochi Cricket Pvt. Ltd. and others** (2018) 6 SCC 287;

(ii) **Hindustan Construction Company Limited and others Vs. Union of India and others**, AIR 2020 SC 122;

(iii) **State of Rajasthan and others Vs. J.K. Synthetics Ltd. and others**, (2011) 2 SCC 518.

10. He further submits that in the case of **Hindustan Construction Company Limited (supra)** the Apex Court has categorically held that no automatic stay of the award would lie merely filing of an application under Section 34 of the Arbitration Act.

11. Learned Senior Counsel further submits that the executing court has rightly computed the mesne profits with interest and it is not open for the petitioner at this stage to challenge the grant of penal interest in favour of respondent vide award dated 19.7.2017 as the award has attained finality up to the stage

of Hon'ble the Supreme Court. He prays for dismissal of the present writ petition.

12. After hearing learned counsel for the parties, the Court has perused the records.

13. It is admitted between the parties that the award has been passed on 19.7.2017, in which the petitioner was directed to vacate the premises in question and hand over the peaceful possession within 30 days from the date of passing the award, failing which the respondent -claimant shall be entitled not only for the rent but also the mesne profits along with interest. It is also not in dispute that against the said award, the petitioner has filed an application under Section 34 of the Act in the year 2017. It is also not in dispute that the possession as per the direction of the award was handed over in the month of April 2024.

14. The argument was raised by the counsel for the petitioner that mere filing of the application under Section 34 of the Act, the arbitral award was stayed, therefore, no default has been committed by the petitioner which entitles respondent no. 1 to claim mesne profits. But the record reveals that application under Section 34 of the Act was filed by the petitioner in the year 2017 and Section 34 of the Arbitration Act was amended with effect from 23.10.2015. Section 34 of the Act is considered to be Court proceedings and amendment made therein will apply prospectively as held by the Apex Court in the case of **Board of Control for Cricket in India (supra)** and same was further clarified in the case of **Shree Vishnu Constructions (supra)**.

15. The relevant para of the judgement passed by the Apex Court in the case of **Board of Control for Cricket in India (supra)** are quoted hereunder:-

“25. That the expression “the arbitral proceedings” refers to proceedings before an arbitral tribunal is clear from the heading of Chapter V of the 1996 Act, which reads as follows:

“Conduct of Arbitral Proceedings”

The entire chapter consists of Sections 18 to 27 dealing with the conduct of arbitral proceedings before an arbitral tribunal. What is also important to notice is that these proceedings alone are referred to, the expression “to” as contrasted with the expression “in relation to” making this clear. Also, the reference to Section 21 of the 1996 Act, which appears in Chapter V, and which speaks of the arbitral proceedings commencing on the date on which a request for a dispute to be referred to arbitration is received by the respondent, would also make it clear that it is these proceedings, and no others, that form the subject matter of the first part of Section 26. Also, since the conduct of arbitral proceedings is largely procedural in nature, parties may “otherwise agree” and apply the Amendment Act to arbitral proceedings that have commenced before the Amendment Act came into force. In stark contrast to the first part of Section 26 is the second part, where the Amendment Act is made applicable “in relation to” arbitral proceedings which commenced on or after the date of commencement of the Amendment Act. What is conspicuous by its absence in the second part is any reference to Section 21 of the 1996 Act. Whereas the first part refers only to arbitral proceedings before an arbitral tribunal, the second part refers to Court proceedings “in relation to” arbitral proceedings, and it is the commencement of these Court proceedings that is referred to in the second part of Section 26, as the words “in relation to” the arbitral proceedings” in

the second part are not controlled by the application of Section 21 of the 1996 Act.

Section 26, therefore, bifurcates proceedings, as has been stated above, with a great degree of clarity, into two sets of proceedings – arbitral proceedings themselves, and Court proceedings in relation thereto. The reason why the first part of Section 26 is couched in negative form is only to state that the Amendment Act will apply even to arbitral proceedings commenced before the amendment if parties otherwise agree. If the first part of Section 26 were couched in positive language (like the second part), it would have been necessary to add a proviso stating that the Amendment Act would apply even to arbitral proceedings commenced before the amendment if the parties agree. In either case, the intention of the legislature remains the same, the negative form conveying exactly what could have been stated positively, with the necessary proviso. Obviously, “arbitral proceedings” having been subsumed in the first part cannot re-appear in the second part, and the expression “in relation to arbitral proceedings” would, therefore, apply only to Court proceedings which relate to the arbitral proceedings. The scheme of Section 26 is thus clear: that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced, as understood by Section 21 of the principal Act, on or after the Amendment Act, and to Court proceedings which have commenced on or after the Amendment Act came into force.

....

43. The matter can also be looked at from a slightly different angle. Section 36, prior to the Amendment Act, 74 is only a clog on the right of the decree holder, who cannot execute the award in

his favour, unless the conditions of this section are met. This does not mean that there is a corresponding right in the judgment debtor to stay the execution of such an award. Learned counsel on behalf of the Appellants have, however, argued that a substantive change has been made in the award, which became an executable decree only after the Section 34 proceedings were over, but which is now made executable as if it was a decree with immediate effect, and that this change would, therefore, take away a vested right or accrued privilege in favour of the Respondents. It has been argued, relying upon a number of judgments, that since Section 36 is a part of the enforcement process of awards, there is a vested right or at least a privilege accrued in favour of the Appellants in the unamended 1996 Act applying insofar as arbitral proceedings and court proceedings in relation thereto have commenced, prior to the commencement of the Amendment Act. The very judgment strongly relied upon by senior counsel for the appellants, namely Garikapati Veeraya (*supra*), itself states in proposition (v) at page 515, that the vested right of appeal can be taken away only by a subsequent enactment, if it so provides specifically or by necessary intendment and not otherwise. We have already held that Section 26 does specifically provide that the court proceedings in relation to arbitral proceedings, being independent from arbitral proceedings, would not be viewed as a continuation of arbitral proceedings, but would be viewed separately. This being the case, it is unnecessary to refer to judgments such as *Union of India v. A.L. Rallia Ram*, (1964) 3 SCR 164 and *NBCC Ltd. v. J.G. Engineering (P) Ltd.*, (2010) 2 SCC 385, which state that a Section 34 proceeding is a supervisory and not an appellate proceeding. Snehadeep

Structures (P) Ltd. v. Maharashtra Small-Scale Industries Development Corpn. Ltd., (2010) 3 SCC 34 at 47-49, which was cited for the purpose of stating that a Section 34 proceeding could be regarded as an “appeal” within the meaning of Section 7 of the Interest on Delayed Payments To Small Scale and Ancillary Industrial Undertakings Act, 1993, is obviously distinguishable on the ground that it pertains to the said expression appearing in a beneficial enactment, whose object would be defeated if the word “appeal” did not include a Section 34 application. This is made clear by the aforesaid judgment itself as follows:

“36. On a perusal of the plethora of decisions aforementioned, we are of the view that “appeal” is a term that carries a wide range of connotations with it and that appellate jurisdiction can be exercised in a variety of forms. It is not necessary that the exercise of appellate jurisdiction will always involve re-agitation of entire matrix of facts and law. We have already seen in *Abhayankar* [(1969) 2 SCC 74] that even an order passed by virtue of limited power of revision under Section 115 of the Code is treated as an exercise of appellate jurisdiction, though under that provision, the Court cannot go into the questions of facts. Given the weight of authorities in favour of giving such a wide meaning to the term “appeal”, we are constrained to disagree with the contention of the learned counsel for the respondent Corporation that appeal shall mean only a challenge to a decree or order where the entire matrix of law and fact can be re-agitated with respect to the impugned order/decreed. There is no quarrel that Section 34 envisages only limited grounds of challenge to an award; however, we see no reason why that alone should take out an application under Section 34 outside the

ambit of an appeal especially when even a power of revision is treated as an exercise of appellate jurisdiction by this Court and the Privy Council.

40. It may be noted that Section 6(1) empowers the buyer to obtain the due payment by way of any proceedings. Thus the proceedings that the buyer can resort to, no doubt, includes arbitration as well. It is pertinent to note that as opposed to Section 6(2), Section 6(1) does not state that in case the parties choose to resort to arbitration, the proceedings in pursuance thereof will be governed by the Arbitration Act. Hence, the right context in which the meaning of the term “appeal” should be interpreted is the Interest Act itself. The meaning of this term under the Arbitration Act or the Code of Civil Procedure would have been relevant if the Interest Act had made a reference to them. For this very reason, we also do not find it relevant that the Arbitration Act deals with applications and appeals in two different chapters. We are concerned with the meaning of the term “appeal” in the Interest Act, and not in the Arbitration Act.”

46. In 2004, this Court’s Judgment in National Aluminium Company (supra) had recommended that Section 36 be substituted, as it defeats the very objective of the alternative dispute resolution system, and that the Section should be amended at the earliest to bring about the required change in law. It would be clear that looking at the practical aspect and the nature of rights presently involved, and the sheer unfairness of the unamended provision, which granted an automatic stay to execution of an award before the enforcement process of Section 34 was over (and which stay could last for a number of years) without having to look at the facts of each case, it is clear that Section 36 as

amended should apply to Section 34 applications filed before the commencement of the Amendment Act also for the aforesaid reasons.”

16. The relevant para of the judgement passed by the Hon’ble the Apex Court in the case of **Shree Vishnu Constructions (supra)** is quoted hereunder:-

9.1 The submission on behalf of the appellant, as above, cannot be accepted for the simple reason that this Court in the case of BCCI (supra) was considering the court proceedings under sections 34 and 36. To that, this Court interpreted section 26 in paragraphs 37 to 39, reproduced hereinabove, and held that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced as understood by section 21 of the principal Act, on or after the Amendment Act, 2015 and to court proceedings which have commenced on or after the Amendment Act, 2015 came into force. Therefore, any observations made by this Court in paragraphs 37 to 39 in the case of BCCI (supra) shall be understood and construed with respect to court proceedings which have commenced on or after the Amendment Act coming into force, namely, the proceedings under sections 34 & 36. Therefore, the decisions of this Court in the cases of Parmar Constructions Company (supra) and Pardeep Vinod Construction Company (supra) cannot be said to be per incuriam and/or in conflict with the decision of this Court in the case of BCCI (supra). As observed hereinabove, in the case of Parmar Constructions Company (supra) which is directly on the point, it is Civil Appeal No. 3461 of 2023 Page 40 of 42 specifically observed and held that the 2015 Amendment Act, which

came into force w.e.f. 23.10.2015 shall not apply to the arbitral proceedings which are commenced in accordance with the provisions of section 21 of the principal Act, 1996 before the coming into force the 2015 Amendment Act, unless parties otherwise agree (para 27). Similar view has been expressed in the case of S.P. Singla Constructions Private Limited (supra).

(Emphasis supplied by this Court)

17. In the aforesaid judgement, Hon'ble the Supreme Court has categorically held that the proceedings under Section 34 and 36 of the Arbitration Act are Court proceedings and any proceeding commenced after the amendment came into force, will be prospective in nature.

18. In the present case, the application under Section 34 of the Arbitration Act was filed by the petitioner in the year 2017, which is much after the enforcement of the amended Act in the year 2015, therefore, the argument of the counsel for the petitioner that merely on filing of the application under Section 34 of the Arbitration Act, against the award in question was automatically stayed, is misplaced and cannot be accepted.

19. Further, Hon'ble the Apex Court in the case of **Hindustan Construction Company Limited (supra)** after has taken note of its earlier judgement passed in the case of Board of Control for Cricket in India (supra) has categorically held that no automatic stay of the award would lie just because of filing an appeal under Section 34 of the Arbitration Act.

20. The other argument raised by the counsel for the petitioner after relying

upon the judgement of the Apex Court in the case of Small Scale Industrial Manufactures Association (supra) that since there was no default on the part of the petitioner, the mesne profits ought not to have been granted.

21. On perusal of the aforesaid judgement, it appears that the said judgement was entirely based upon the facts of that case as the same was related to the economic policies framed by the Union Government, but the facts of the case in hand are entirely different. The petitioner has not hand over the possession within 30 days as per the award dated 19.7.2017, or award was stayed or set aside by the competent Court, therefore, the benefit of the said judgement cannot be accorded in favour of the petitioner.

22. Admittedly, the petitioner has not vacated the premises in question within 30 days from the date of passing the award and further the petitioner has not brought any material on record to show that the award was stayed by any of the competent Court, therefore, the contesting respondent no. 1 is entitled for mesne profits.

23. Hon'ble the Apex Court in the case of State of Rajasthan Vs. J.K. Synthetics Ltd. (supra) has held as under :

14. The contesting respondents filed the second round of writ petitions before the High Court challenging the demand for interest and the validity of Rule 64A, on two grounds : that Rule 64-A was invalid; that the rate of interest was excessive. The learned Single Judge negatived the first contention in view of the decision of this South Eastern Coalfields. He however accepted the second contention and restricted the rate of interest to 12% per

annum. The contesting respondents have not challenged the order of the High Court holding that they are liable to pay interest at 12% per annum. They have in fact paid the interest at such rate. Before us, one of the contentions urged to resist the claim of the State for increase in the rate of interest, is with reference to the fundamental question about the liability itself. It was submitted that they were not liable to pay interest on the increase in royalty amount, in view of their challenge to the increase and order of interim stay of the High Court. It was submitted by the contesting respondents, that even if the writ petitions challenging the notification dated 17.2.1992 revising the royalty rate were ultimately dismissed, in the absence of any specific direction by the High Court to pay interest on the difference in royalty amount, they were not liable to pay any interest during the period of operation of stay. This question is no longer *res integra*. We may refer to 11 the decisions of this Court that have categorically laid down about the liability to pay interest for the period of stay when the stay is ultimately vacated.

15. In *Kanoria Chemicals and Industries Ltd. vs. UP State Electricity Board* - 1997 (5) SCC 772, this Court held that grant of stay of a notification revising the electricity charges does not have the effect of relieving the consumer of its obligation to pay interest (or late payment surcharge) on the amount withheld by them by reason of the interim stay, if and when the writ petitions are dismissed ultimately. The said principle was based on the following reasoning :

"Holding otherwise would mean that even though the Electricity Board, which was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It

would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the Notification revising the rates and fails in his attack upon the validity of the Notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply - which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law..... It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same

Notification - the operation of which was stayed."

24. The Apex Court in the aforesaid judgement has categorically held that after dismissal of the writ petition, the consumer is liable to pay interest even during period of interim order which entitle the consumer to withhold the amount.

25. The case in hand, the arbitral award dated 19.7.2017 was not stayed or any material was brought on record otherwise and ultimately the award dated 19.7.2017 has been affirmed by the Apex Court and no proceedings are pending thereafter. Thus, in view of the aforesaid facts, the contesting respondent no. 1 is entitled for mesne profits as the award dated 19.7.2017 was not complied with in its letter and spirit.

26. In view of the aforesaid discussions as well as law laid down by the Apex Court as referred herein above, no interference is called for by this Court in the impugned order.

27. The petition lacks merit and same is dismissed accordingly.

(2025) 3 ILRA 98

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.03.2025 &

26.03.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 10194 of 2024
(Civil)

Govind Ram Pandey & Anr. ...Petitioners
Versus

Nutan Prakash & Ors. ...Respondents

Counsel for the Petitioners:

Sri Ravi Shanker Pathak, Sri Siddharth Niranjan, Sri Yadvendra Pai Pandey, Sri Dharam Pal Singh (sr. Adv.)

Counsel for the Respondents:

Ms. Ananya Pandey, Sri Ashish Kumar Dubey, Sri Durlabh Kumar Pandey, Sri Badri Mani Triparthi, Sri Rahul Sahai, Sri Rakesh Kumar, Sri Yadvendra Rai Pandey, Ms. Nandani Sharma, Sri C.L. Pandey (Sr. Adv.), Sri H.N. Singh (Sr. Adv.)

Civil Law-The Constitution of India, 1950-Article 227 - The Code of Civil Procedure, 1908-Section 94 - Order 40 Rule 1-

Appointment of Receivers and controlling day to day functioning of Sri Thakur Baldeo Ji Maharaj Temple aka Dauji Mandir--- No person shall act as Receiver of the Temple in question and a Seven Member Management Committee be constituted in terms of Agreement dated 02.09.1904---Matter remitted with following directions to learned District Judge (1) Convene a meeting of 734 Pandas/Sevayats of Dauji Temple, who are divided in six Thoks, to be conducted by the senior most Additional District Judge within a month (2) A supplementary agreement would be executed by all 734 members only to the extent that their names are brought on record, without touching upon the terms and conditions laid out in the Agreement dated 02.09.1904 (3) members shall select a person from their respective Thoks to be sent to Committee of Management for managing the affairs of the Temple (4) Management Committee would be constituted in terms of Agreement dated 02.09.1904 and only the new members of 734 families would become part of the supplementary agreement (5) newly constituted Management Committee would look after day to day affairs of the Temple---The District Judge, Mathura, is hereby requested to get the complete inventory prepared of all movable and immovable properties of Dauji Temple, including cash, bank accounts, ornaments etc. immediately, within a period of two days from today. When the management is handed over to newly constituted Committee of Management, the inventory so prepared shall also be passed on. **(Para 61 to 65)** (E-15)